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SUBJECT: COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTI-

NATIONAL ENTERPRISES (CIME) - CONSULTATIONS AND

MNE GUIDELINES

REF: OECD DOCUMENTS IME/WP/76.8, IME/WP/76.10, AND TV/CS

1. FOLLOWING ARE TEXTS OF NEW CIME DOCUMENTS

(IME/WP/76.8, IME/WP/76.10, AND TV/CS):

TEXT OF IME/WP/76.8 FOLLOWS:

INTERGOVERNMENTAL CONSULTATION PROCEDURES
ON THE IMPLEMENTATION OF THE GUIDELINES

(NOTE BY THE SECRETARIAT)

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IN THE LAST IME COMMITTEE MEETING THE CHAIRMAN PUT FORWARD A COMPROMISE AS REGARDS THE POSSIBILITY FOR ENTERPRISES TO EXPRESS THEIR VIEWS DURING THE PROCEDURE. THIS PROPOSAL STILL STANDS.

HOWEVER, THE DRAFTING GROUP WAS INSTRUCTED TO CONSIDER WHETHER IN ADDITION TO GOVERNMENTS OTHERS COULD RAISE QUESTIONS TO THE COMMITTEE.

THE ANNEXED TEXT MAY FACILITATE THE DISCUSSION.

COMMENTS:

PARAGRAPH 1: PURE DRAFTING CHANGES.

PARAGRAPHS 2, 3 AND 4 ARE BASED ON THE ASSUMPTION THAT THE COMMITTEE SHOULD NOT DEAL WITH THE APPLICATION OF THE GUIDELINES AND PASS NO JUDGEMENT ON THE BEHAVIOUR OF SPECIFIC ENTERPRISES.

THE TEXT OF PARAGRAPH 2 HOWEVER AIMS AT GIVING COMPETENCE TO THE COMMITTEE FOR GIVING AN INTERPRETATION OF THE GUIDELINES AS DISTINCT FROM APPLICATION OR IMPLEMENTATION. IT FURTHER PERMITS NOT ONLY A MEMBER COUNTRY BUT EQUALLY A MULTINATIONAL ENTERPRISE TO RAISE A QUESTION OF INTERPRETATION UNDER CERTAIN STRICT CONDITIONS.

PARAGRAPH 3 LAYS DOWN ELEMENTS OF PROCEDURE IN CASE PARAGRAPH 2 SHOULD BE APPROVED.

PARAGRAPH 6 CORRESPONDS TO A SUGGESTION MADE BY THE U.K. DELEGATION.

ANNEX

INTERGOVERNMENTAL CONSULTATION PROCEDURES ON THE IMPLEMENTATION OF THE GUIDELINES

1. THE (COMMITTEE) SHALL PERIODICALLY OR AT THE REQUEST OF A MEMBER COUNTRY HOLD AN EXCHANGE OF VIEWS ON MATTERS LIMITED OFFICIAL USE

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RELATED TO THE GUIDELINES AND THE EXPERIENCE GATHERED IN THEIR IMPLEMENTATION. THE (COMMITTEE) SHALL ALSO PERIODICALLY INVITE BIAC AND TUAC TO EXPRESS THEIR VIEWS ON THESE SUBJECTS.

2. UPON REQUEST OF A MEMBER COUNTRY, THE (COMMITTEE) SHALL, ACTING BY MAJORITY, GIVE AN INTERPRETATION OF THE GUIDELINES.

THE (COMMITTEE) MAY EQUALLY GIVE AN INTERPRETATION OF THE GUIDELINES UPON A WRITTEN APPLICATION SUBMITTED TO IT BY A MULTINATIONAL ENTERPRISE SHOWING TO THE SATISFACTION OF THE (COMMITTEE) A LEGITIMATE INTEREST, THE REASONS WHY AND THE CIRCUMSTANCES UNDER WHICH IT RAISES THE QUESTION.

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3. IN CONSIDERING EACH REQUEST THE COMMITTEE SHALL DETERMINE THE PROCEDURE TO BE FOLLOWED INCLUDING THE DESIRABILITY OF INVITING ENTERPRISES TO EXPRESS THEIR VIEWS. (THE COMMITTEE MAY REQUEST THE ADVICE OF A PANEL OF INDEPENDENT EXPERTS' APPOINTED BY THE SECRETARY-GENERAL.) (THE COMMITTEE MAY CALL UPON AN INDEPENDENT PANEL SELECTED BY THE SECRETARY-GENERAL TO CARRY OUT A ROLE OF FACT-FINDING AND ULTIMATELY TO ADVISE THE COMMITTEE ON ISSUES RAISED IN CONNECTION WITH

SUCH REQUEST,) (IT BEING UNDERSTOOD THAT THE COMMITTEE
WOULD NOT BE BOUND BY THE ADVICE OF THE PANEL.)

4. THE (COMMITTEE) SHALL IN ALL EVENTS ABSTAIN FROM
PASSING CONCLUSIONS ON THE BEHAVIOUR OF SPECIFIC ENTER-
PRISES.

5. FORMER PARAGRAPH 4 UNCHANGED: MEMBER COUNTRIES MAY
REQUEST THAT CONSULTATIONS BE HELD IN THE (COMMITTEE) ON
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ANY PROBLEM ARISING FROM THE FACT THAT MULTINATIONAL
ENTERPRISES ARE MADE SUBJECT TO CONFLICTING REQUIREMENTS.
GOVERNMENTS CONCERNED WILL CO-OPERATE IN GOOD FAITH TO
RESOLVE SUCH PROBLEMS, EITHER WITHIN THE (COMMITTEE) OR
THROUGH OTHER MUTUALLY ACCEPTABLE ARRANGEMENTS.

6. EACH (THREE) YEARS THE (COMMITTEE) SHALL REPORT TO
THE COUNCIL ON ALL MATTERS RELATED TO THE GUIDELINES AS
WELL AS THEIR IMPLEMENTATION, AND THE VIEWS THEREON
EXPRESSED BY INTERESTED PARTIES AND THEIR ORGANISATIONS.

END TEXT

TEXT OF IME/WP/76.10 FOLLOWS:

THE PACKAGE
(NOTE BY THE SECRETARIAT)

AT THE LAST IME COMMITTEE MEETING THE SECRETARIAT
WAS INVITED TO DRAFT AN OVERALL INSTRUMENT BY WHICH THE
COUNCIL ADOPTS THE GUIDELINES AS WELL AS THE INSTRU-
MENTS ON NATIONAL TREATMENT AND ON INCENTIVES AND DIS-
INCENTIVES IN ONE PACKAGE.

THE ANNEXED DRAFT HAS BEEN DRAWN UP IN THE CLASSI-
CAL LEGAL FORM, TO BE CHANGED SUBSEQUENTLY INTO MORE
PROSAIC WORDING, REPLACING THE CLASSICAL REPETITION OF
"THAT" BY WORDS SUCH AS "DESIROUS," "DETERMINED,"
"RESOLVED," ETC. ONCE THERE IS AGREEMENT ON THE LEGAL
FORM, THE STRUCTURE AND THE SUBSTANCE.

THE PAPER IS MEANT OF COURSE TO BE DISCUSSED AT THE
MARCH MEETING OF THE IME COMMITTEE BUT, IN ORDER TO SAVE
TIME, IT IS BEING CIRCULATED NOW, I.E. BEFORE THE FORTH-
COMING MEETING OF THE DRAFTING GROUP (16TH AND 17TH
FEBRUARY) IN CASE DELEGATIONS WOULD LIKE TO PRESENT THEIR
FIRST REACTIONS ON THAT OCCASION, GIVING THE SECRETARIAT
A FIRST ORIENTATION OF THE MERITS OF THIS CONCEPT.

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DECLARATION (AGREEMENT AND DECISION) APPROVED
(CONCLUDED AND TAKEN) BY THE COUNCIL AT ITS
MEETING ON

THE GOVERNMENTS OF OECD MEMBERS:

DECLARE (CONSIDERING):

1. THAT INTERNATIONAL INVESTMENT HAS ASSUMED INCREASED IMPORTANCE IN THE WORLD ECONOMY AS WELL AS IN THE DEVELOPMENT OF THEIR COUNTRIES, CONTRIBUTING TO THEIR ECONOMIC DEVELOPMENT BY PROMOTING THE EFFICIENT USE OF THEIR RESOURCES;
2. THAT AN IMPORTANT PART OF SUCH INVESTMENT IS REALISED THROUGH MULTINATIONAL ENTERPRISES;
3. THAT MEMBER GOVERNMENTS CAN - IN CONFORMITY WITH THE OECD CONVENTION, AND IN PARTICULAR ARTICLE 2 THERE-OF - BEST FURTHER THIS INVESTMENT PROCESS BY ENDEAVOURING JOINTLY TO SOLVE OR MINIMISE THE PROBLEMS WHICH MAY ARISE FROM INTERNATIONAL INVESTMENT, IN PARTICULAR BY MULTINATIONAL ENTERPRISES;
4. THAT MULTINATIONAL ENTERPRISES ENJOY A GREATER AREA

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OF FREEDOM THAN ENTERPRISES EXERCISING THEIR ACTIVITIES WITHIN ONE JURISDICTION ONLY, IN PARTICULAR AS REGARDS THE GEOGRAPHICAL DISTRIBUTION OF THEIR FUNCTIONS, SUCH AS PRODUCTION, EXPORTATION AND RESEARCH, THE DISTRIBUTION OF REWARDS AMONG THEIR SUBSIDIARIES AND THEIR RESPONSIVENESS TO GOVERNMENT POLICIES, INCLUDING SOCIAL POLICIES, AIMED AT INCREASING LOCAL BENEFITS;

5. THAT THE EXISTENCE AND USE OF THAT FACULTY SOMETIMES GIVE RISE TO ANXIETIES AND CONTROVERSIES IN BOTH HOME AND HOST COUNTRIES;
6. THAT, ALTHOUGH MULTINATIONAL ENTERPRISES ARE SUBJECT TO AND MUST RESPECT FULLY THE APPLICABLE LAW IN THE COUNTRIES WHERE THEY OPERATE, THE USE OF THEIR AREA OF FREEDOM EXCEEDS THE SCOPE OF NATIONAL LEGISLATION;

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7. THAT, ALTHOUGH SOLUTIONS MIGHT ULTIMATELY BE FOUND TO SOME PROBLEMS THROUGH THE HARMONISATION OF NATIONAL LEGISLATION OR BY INTERNATIONAL AGREEMENT, THIS WOULD NOT APPEAR TO BE FEASIBLE FOR THE TIME BEING;

8. THAT, THEREFORE, MEMBER GOVERNMENTS OF OECD, RESOLVED TO INTENSIFY THEIR CO-OPERATION AND CONSULTATION ON ISSUES RELATING TO INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES, HAVE DRAWN UP THE FOLLOWING THREE INTER-RELATED INSTRUMENTS, ANNEXED TO THIS DECLARATION, WHICH, ALTHOUGH EACH DEALS WITH A DIFFERENT ASPECT OF THE MATTER, ARE AIMED AT CONSTITUTING TOGETHER A FIRST STEP UNDER-

TAKEN WITHIN THE OECD TO SOLVING THE AFOREMENTIONED PROBLEMS:

ANNEX L: GUIDELINES FOR MULTINATIONAL ENTERPRISES WHICH PRESENT IN THE INTRODUCTION, THE GENERAL ORIENTATION OF MEMBER COUNTRIES TOWARD MULTINATIONAL ENTERPRISES, INCLUDING GOVERNMENTS' MOST BASIC RESPONSIBILITIES TO THESE ENTERPRISES, AND ESTABLISH STANDARDS WHICH SHOULD GUIDE THEIR BUSINESS CONDUCT;

ANNEX II: A DECLARATION AND DECISION ON NATIONAL TREATMENT IN WHICH MEMBER GOVERNMENTS ENDORSE THE PRINCIPLE THAT THEY WILL EXTEND TO ENTERPRISES OWNED OR CONTROLLED BY NATIONALS OF OTHER MEMBER COUNTRIES TREATMENT NO LESS FAVOURABLE THAN THAT ACCORDED TO DOMESTIC ENTERPRISES AND AGREE TO CONSULT ONE ANOTHER ON THE IMPLEMENTATION OF THIS PRINCIPLE;

ANNEX III: A DECLARATION AND DECISION ON OFFICIAL INCENTIVES AND DISINCENTIVES IN WHICH MEMBER COUNTRIES AGREE TO CONSULT ON MEASURES THAT ENCOURAGE OR DISCOURAGE INTERNATIONAL INVESTMENT FLOWS WITH THE AIM, STATED IN THE INSTRUMENT, OF MINIMISING POTENTIAL HARM TO THE INTERESTS OF OTHER MEMBER COUNTRIES.

AGREE HEREBY
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(1) TO RECOMMEND JOINTLY TO MULTINATIONAL ENTERPRISES OPERATING IN THEIR TERRITORIES THE OBSERVANCE OF THE

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GUIDELINES, ATTACHED AS ANNEX I TO THIS DECLARATION,
IN THE LIGHT OF THE INTRODUCTORY STATEMENT PRECEDING
THESE GUIDELINES;

(2) TO ADOPT THE INSTRUMENTS AS SET FORTH IN ANNEXES II
AND III TO THIS DECLARATION;

(3) TO CONSULT ONE ANOTHER ON MATTERS RELATED TO THE
GUIDELINES AS WELL AS THEIR IMPLEMENTATION AND
INTERPRETATION, TAKING INTO ACCOUNT THE VIEWS
EXPRESSED BY INTERESTED PARTIES AND THEIR ORGANISATIONS,
IN CONFORMITY WITH THE PROCEDURES LAID DOWN
IN ANNEX IV TO THIS DECLARATION.

DECIDE:

TO CHARGE THE COMMITTEE ON INTERNATIONAL INVESTMENT
AND MULTINATIONAL ENTERPRISES

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(A) TO FULFIL THE TASK PURSUANT TO THE PROCEDURES
LAID DOWN IN ANNEX IV; AND

(NEW MANDATE)

END TEXT

TEXT OF TV/CS FOLLOWS:

COMMITTEE ON INTERNATIONAL INVESTMENT

AND MULTINATIONAL ENTERPRISES

ON THE PROPOSAL OF THE GERMAN DELEGATION, THE MEETING OF THE DRAFTING GROUP WILL BE FOLLOWED (IN THE AFTERNOON OF TUESDAY, 17TH FEBRUARY, OR IN THE MORNING OF WEDNESDAY, 18TH FEBRUARY) BY AN INFORMAL EXCHANGE OF VIEWS AMONGST MEMBERS OF THE GROUP TO DISCUSS THE PREPARATION OF THE SO-CALLED "LIMA CONFERENCE."

END TEXT

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